

1 MR. LYON: It could be. I don't know whether
2 that happened or not, and the short answer is, I
3 haven't proffered that testimony.

4 JUDGE CHACHKIN: So, you intend to put on --
5 what's your idea, to put on -- to do what?

6 MR. LYON: I intend to put Mr. Pascal on the
7 stand and have Mr. Pascal teach a defined segment of
8 the area, either in novice or tech, or perhaps the
9 Bureau and I could agree as to a specific section that
10 he would teach.

11 Ms. McElwaine would take notes of
12 Mr. Pascal's presentation, and Mr. Ramsey would review
13 them, and they would -- I would ask them on cross
14 examination to give me their evaluations of the amount
15 of the question pool that he covered.

16 JUDGE CHACHKIN: It would seem to me that --
17 I don't quite understand what you mean by teaching. We
18 have to have a record of this. I assume you could ask
19 them a question on the stand, what subjects did
20 Ms. McElwaine say you only covered A, B and C. Tell
21 us, did you, in fact, cover other areas. Yes. What
22 other areas did you cover, and present evidence that
23 way, I guess, to impeach Ms. McElwaine.

24 MR. LYON: But, Your Honor, that's just a
25 matter of his word against hers.

1 JUDGE CHACHKIN: Well, if he says he taught
2 this course, it's also his word against hers. I mean,
3 she's saying that he didn't, in fact, teach; that only
4 her notes show what areas he taught and what he didn't
5 teach.

6 MR. LYON: That's essentially her testimony;
7 that my notes say --

8 JUDGE CHACHKIN: And he presumably would take
9 the stand, and I assume you could have other persons
10 say that -- you'd have other persons saying that, in
11 fact, this is the areas -- he did cover all these other
12 areas. He didn't limit himself.

13 I don't know how this would play out, his
14 teaching a course.

15 MR. LYON: Well, I wouldn't have him teach an
16 entire course, Your Honor. I would have him teach a
17 defined segment, and it would be in front of you. It
18 would be in front of the reporter.

19 JUDGE CHACHKIN: Yes, but the question is
20 still credibility. Whether, in fact, he taught those
21 subjects on the days in question.

22 MR. LYON: I agree, Your Honor, and the way
23 that we reach the subject of credibility is we give
24 Christine McElwaine the opportunity to show us that her
25 notes are credible.

1 I personally don't think her notes are very
2 probative at this stage and, so, if you agree with me
3 on Wednesday when I make the objection that they
4 shouldn't be admissible, then at that point it might
5 not make a difference.

6 But I have to go on the assumption that they
7 will be admitted, and Mr. Ramsey's testimony with
8 respect to them will be admitted and that, therefore, I
9 have to have a method for attacking her credibility and
10 also demonstrating, Your Honor, exactly the way
11 Mr. Pascal teaches. I think that would be very helpful
12 to Your Honor in making a decision on whether or not
13 he's cheating or he's a gifted teacher.

14 JUDGE CHACHKIN: Well, all I can say is I
15 don't know what you mean by a classroom and having her
16 take notes. That doesn't make sense.

17 It seems to me that she'll testify, and
18 you'll cross examine her on the basis of your
19 conversations with Mr. Pascal and Ms. Crane, and then
20 you'll put Mr. Pascal on the stand, and he'll say what
21 he did, and then I'll have to determine who I should
22 believe and listen to all the other testimony. So, I
23 don't know what you mean by a classroom and she's going
24 to take notes. This is the notes she says she took.

25 MR. LYON: Your Honor, if I can explain what

1 I intend to do. I intend to have Mr. Pascal teach from
2 the stand a defined element of the class and have
3 Ms. McElwaine in the hearing room taking notes.

4 JUDGE CHACHKIN: Why should she be taking
5 notes? What is that going to accomplish?

6 MR. LYON: It will have an indication of
7 whether her notes were complete or not.

8 JUDGE CHACHKIN: But that's --

9 MR. LYON: Whether she has the capacity to
10 take complete notes from this man's lecture.

11 JUDGE CHACHKIN: Well, I don't know.

12 MR. LYON: She's asserting that her notes
13 were complete and, based on her notes, he didn't teach,
14 let's say, half the question pool.

15 Now, I don't know there's any requirement
16 that he do that, but that's the basis of the Bureau's
17 case. I don't think it's a sufficient basis, but
18 that's their case. I think I have to have a way to
19 respond to that.

20 JUDGE CHACHKIN: It seems to me in all
21 situations of this nature, there's the question of
22 credibility. I'll have to listen and view the
23 testimony of Ms. McElwaine and Mr. Pascal's testimony
24 and determine who is more credible.

25 MR. LYON: Exactly, Your Honor, and this

1 exercise, this demonstration is designed to allow you
2 to judge the credibility of these two witnesses.

3 JUDGE CHACHKIN: I don't see by her taking
4 notes it's going to judge the credibility of her as a
5 witness, the credibility of her notes.

6 Does the Bureau have any comments on this?

7 MR. MALINEN: We do.

8 MR. LYON: Your Honor, if I can just make one
9 more point. Her notes are the basis of her
10 credibility. Her notes are the basis for her testimony
11 that Mr. Pascal "only taught the test."

12 JUDGE CHACHKIN: I understand that, and you
13 can challenge them. They were contemporaneously made,
14 presumably, but you could challenge them that they're
15 incomplete and they didn't contain other areas that he
16 taught. I don't know what you're going to come up
17 with, and I don't know what your testimony is.

18 Go ahead. The Bureau has something to say.

19 MR. MALINEN: Your Honor, we have two primary
20 concerns here, and the first has been brought out just
21 now, and that's the credibility of Mr. Pascal.

22 It seems this is another way to gauge his
23 credibility and, in this case, we would be asking
24 ourselves, is Mr. Pascal making a good-faith effort, in
25 fact, to recreate the examination conditions at issue.

1 If he did not make such a good-faith effort,
2 he could teach in, for instance, a speed reading
3 fashion, teaching what we believe the required number
4 of hours is 20 hours in, say, four hours. So, it would
5 require a genius to pass an examination later even, in
6 fact, in four hours there was sufficient material
7 thrown out, or he could teach in a confusing fashion
8 that would confuse our witness, Christine McElwaine.

9 In either event, it's a certainty that we
10 would be judging his credibility again vis-a-vis that
11 reenactment.

12 And the second point we would make is that
13 this also creates simply technical problems regardless
14 of the good faith or not of Mr. Pascal. All relevant
15 conditions for this sort of, what we would style an
16 experiment, would have to be reenacted, almost in their
17 entirety.

18 For instance, does Mr. Pascal have sufficient
19 notes to reenact something completely.

20 MR. LYON: Your Honor, he's blind.

21 MR. MALINEN: However he records them.

22 MR. LYON: He does it from his head.

23 MR. MALINEN: One of the intangibles here,
24 the setting of the teaching, the relative obscurity
25 that Chris was in amongst 30 versus her being sort of

1 on the spot in a hearing setting now and so forth and,
2 lastly, we would point out a not insignificant point
3 that it would perhaps take up a fair amount of time.

4 MR. LYON: Your Honor, if I can briefly
5 respond to a couple of points that Mr. Malinen has
6 made.

7 He has suggested that Mr. Pascal could cover
8 the entire subject in -- that he thinks should be
9 covered in 20 hours, that he could do it in four hours.
10 That I suggest is directly contradicted by his own
11 witness who says it is impossible to do it.

12 So, now Mr. Malinen is suggesting that
13 Mr. Pascal could somehow collapse the material into
14 four hours that he thinks legitimately should be
15 covered in 20. That's exactly what the point of their
16 case is, Your Honor; that Mr. Pascal can collapse the
17 material sufficient to cover this and, by the way, it's
18 not four hours. I think it was five or six hours
19 despite what the Bureau's witness has testified to.

20 But that's the very point, Your Honor, that
21 he can cover the subject. They're saying he can't, and
22 now they're arguing against a demonstration by saying
23 he could do what they previously had witnesses saying
24 that he can't.

25 I think that's contradictory, Your Honor, and

1 I think that proves the point more than anything that
2 this is a case that's based on supposition and not on
3 evidence.

4 JUDGE CHACHKIN: I'm not going to argue the
5 case at this time. It just seems to me a reenactment
6 is not practical. In order to have a reenactment,
7 you'd have to have the whole setting of the 30 persons
8 in the class, the questions and answers back, all the
9 rest of it.

10 MR. LYON: Your Honor --

11 JUDGE CHACHKIN: The way it seems to me,
12 Mr. Pascal will testify to what he did. Ms. McElwaine
13 will testify what she believed he did, and I'll
14 determine who I want to believe and listen to all the
15 other witnesses.

16 I'm not going to permit a reenactment of the
17 session, what he taught. Of course, you could ask him
18 questions as to what subjects and what he said in the
19 class and how long it took him or what have you and
20 what areas he covered, and then I'll have to determine
21 whether or not she -- her notes fully and accurately
22 reflect what Mr. Pascal taught.

23 MR. LYON: Your Honor, can I at least have
24 him demonstrate for you his teaching style which,
25 apparently, is an issue here?

1 JUDGE CHACHKIN: Well, I don't know what his
2 teaching style is.

3 MR. LYON: Can I say, Mr. Pascal, can you
4 give us an example of how you would teach Morse Code,
5 or could you give us an example of how you would teach
6 the governmental regulation section of the novice
7 examination, so at least you understand how he is able
8 to collapse the material from 20 or 30 questions into
9 two or three paragraphs and employ the memory aides
10 that he teaches his students in order to remember
11 those.

12 JUDGE CHACHKIN: I don't think it's
13 impermissible to give an example of his teaching style
14 if he can do so while he's testifying.

15 MR. LYON: Okay.

16 JUDGE CHACHKIN: Of course, I'll have to
17 listen to objections of the Bureau, but it seems to me
18 if that's an issue, his teaching, and if he gives an
19 example of how he teaches and how I collapse --
20 whatever the answer is, I don't see any objection to
21 that.

22 MR. MALINEN: That would get around the
23 problem of undue waste of time and so on but, if it
24 appears simply to be cumulative and going nowhere, I
25 suspect at some point we would object.

1 JUDGE CHACHKIN: Sure. When you object, I'll
2 make a ruling.

3 All right. I think we've done all we can do
4 today. It's been a long morning without a break, I
5 might add. Do you have anything further, or we could
6 recess until Wednesday morning at 9 a.m.?

7 MR. MALINEN: I think we've covered
8 everything, Your Honor.

9 JUDGE CHACHKIN: All right. We'll be in
10 recess until Wednesday at 9 a.m.

11 (Whereupon, at 11:22 a.m., the conference in
12 the above-entitled matter was concluded.)

13 - - -

C E R T I F I C A T E

This is to certify that the attached proceedings
before the Federal Communications Commission

in the matter of: Marina Del Ray, California

Docket Number: 92-119

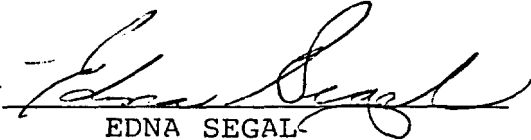
Place: Washington, D.C.

Date: September 18, 1992

were held as herein appears, and that this is a true
and accurate record of the proceedings.

CAPITAL HILL REPORTING, INC.

BY



EDNA SEGAL
Official Reporter